IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6491 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MOHANBHAI KODARBHAI RATHOD

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Appearance:

1. Special Civil Application No. 6491 of 1989

MR SN SHELAT for Petitioner No. 1

NOTICE UNSERVED for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/04/2002

ORAL JUDGEMENT

1. Heard the learned advocate Mr. Hardik C. Rawal appearing on behalf of the petitioner Corporation. Notice of rule has been served to the respondent workman but he has not remained present and he has not engaged

any advocate in the present proceedings. Therefore, the matter has been taken up for hearing in absence of the respondent.

2. The petitioner Corporation has challenged the impugned award passed by the Labour Court, Nadiad in Reference (LCN) No. 972 of 1983 dated 8-1-1988 wherein the Labour Court granted reinstatement with continuity of service without back wages for interim period.

3. Mr. Rawal, learned counsel appearing on behalf of the petitioner has submitted that the respondent workman has committed serious misconduct of collecting fare and not issuing the tickets to the passengers which amounts to dishonesty and misappropriation. On that basis he was dismissed. But the Labour Court has committed error in reinstating to such employee who has committed serious misconduct. He also submitted that the Labour Court has committed an error in not considering the past record of the respondent workman. In the past the respondent workman has committed at least 48 misconducts. Even those misconducts have been ignored by the Labour Court. He has also submitted that in the past 48 misconducts have been committed by the respondent workman and in the present case also he has collected fare from the passengers and not issued tickets to certain passengers and even though the Labour Court granted reinstatement to the respondent workman and wrongly exercised power under Section 11A of the Industrial Disputes Act, 1947.

4. Mr. Rawal learned advocate appearing on behalf of the petitioner Corporation submitted that the Labour Court has committed serious error in considering the case of the respondent workman and in reinstating him and therefore not awarding full back wages cannot be considered to be a punishment to the respondent workman.

5. I have considered the submissions made by Mr. Rawal learned advocate for the petitioner Corporation. Allegation which has been made against the respondent workman is that on 4-7-1982 when his bus was plying on the route Dakor-Mehsana-Vijapur at that time his bus was checked by the Checking Staff and it was found that he had recovered fair from two passengers and issued them 'used tickets' to certain passengers. On that allegation, the chargesheet was served to the respondent workman and thereafter he was dismissed from service on 26-5-1983.

6. Before the Labour Court, the statement of claim

was filed by the respondent workman vide exh. 4 and reply vide exh. 7 has been filed by the petitioner Corporation. Thereafter, vide exh. 19 the respondent workman was examined before the Labour Court. Thereafter, the Labour Court has examined the merits of the matter and then the Labour Court has come to a conclusion that the misconduct which has been alleged against the respondent workman looking to the oral evidence led by the competent authority, the misconduct was found to be proved. The Labour Court also come to a conclusion that the findings recorded by the competent authority is legal and valid and also considered 48 misconducts which were committed in the past by the respondent workman. Thereafter, the Labour Court has examined the matter as to whether the punishment imposed by the competent authority is disproportionate or not. The Labour Court has considered 10 years' service rendered by the respondent workman and gave an opportunity to the respondent workman and not awarded back wages that may be considered as punishment and directed reinstatement with continuity of service.

7. It is necessary to note at this stage that at the time of issuing Rule by this court, this Court has not granted any stay against reinstatement of the respondent workman. This Court issued Rule on 15-12-1992. Thereafter, the respondent workman has worked with the petitioner Corporation for more than 10 years pursuant to the award passed by the Labour Court. It is a fact that after 10 years once reinstatement is already implemented by the respondent Corporation and whether in light of this fact it is necessary to disturb reinstatement of the workman or not. In such a situation, the view taken by the Apex Court in the case of G.S.R.T.C. Vs. Usmanmiya A. Malek reported in 2001 (1) LLJ 180. In the similar situation the Apex Court has held that the misconduct which was found shall have to be proved. But meanwhile the award of reinstatement has been implemented by the Corporation. Therefore, the Apex Court has not disturbed the reinstatement of the respondent workman. This similar situation is there. The respondent workman has worked with the petitioner Corporation for more than 10 years as no interim stay has been granted by this Court at the time of issuing Rule. Therefore, considering the directions issued by the Labour Court granting reinstatement with continuity of service cannot be disturbed by this Court. But the question is that in light of the facts that serious misconduct has been committed by the respondent workman and looking to the past record of 48 misconducts, according to my opinion, non-award of back wages for the interim period cannot be

considered to be sufficient punishment to the respondent workman and hence some punishment is required to be imposed against the respondent workman. According to my opinion, if six years increments with cumulative effect are stopped, it will meet with the ends of justice.

8. In view of the above, the present petition is partly allowed and the impugned award passed by the Labour Court, Nadiad in Reference (LCN) No. 972/83 dated 8-1-1988 is modified to the effect that the directions issued by the Labour Court granting reinstatement with continuity of service remained in operation and not disturbed by this Court. The respondent workman to suffer punishment of six years' increment with cumulative effect. The present petition is partly allowed. Rule is made absolute to the aforesaid extent, with no order as to costs.

Sd/-
(H.K. Rathod, J.)

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/JVSatwara/